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SUBJECT: INL-FUNDED PROGRAM UPDATE: FOCUS ON OPDAT
TECHNICAL ASSISTANCE

REF: A. 09 SARAJEVO 1430
[B](#). 07 SARAJEVO 1405
[C](#). SARAJEVO 21
[D](#). 09 SARAJEVO 971

[1](#)1. (U) Summary. The work being done by INL-funded Overseas Prosecutorial Development and Assistance Program (OPDAT) remains crucial to our rule of law agenda in Bosnia. In addition to its training programs, OPDAT is providing technical assistance to the State Prosecutor's Special Department for Organized Crime (SDOC) aimed at beefing up Bosnia's ability to investigate and prosecute terrorism, organized crime, and corruption cases. This assistance has come into even greater demand following the December 2009 decision by High Representative Valentin Inzko to extend the mandate of international judges and prosecutors working on war crimes cases but not on organized crimes cases at the State Prosecutor's Office and the State Court. OPDAT is also promoting discussions about needed judicial reforms in support of Bosnia's aspirations of integrating into the EU. The following is a review of key OPDAT training programs and justice-sector initiatives from September to December 2009. End Summary.

OPDAT Boosts SDOC's Fight Against Terrorism

[1](#)2. (SBU) OPDAT is continuing to provide technical know-how and mentoring to prosecutors and legal officers working on terrorism and terrorism finance cases in the State Prosecutors Special Department for Organized Crime (SDOC). Intermittent Legal Advisor (ILA) Scott Hulsey, who replaced ILA Rick Willis, arrived in November for a six-month assignment. Hulsey's expertise is especially crucial to SDOC given HighRep Valentin Inzko's decision in December extend the mandate of international judges and prosecutors working on war crimes cases but not on organized crime cases (Ref A).

While Inzko's decision provides for international advisors to work in SDOC given the continuing need for technical expertise and transfer of technical know-how, it will take some time for all of the (four) advisor slots requested by Barasin to be filled and for nationals to replace five positions vacated by internationals.

[1](#)3. (SBU) ILA Hulsey, whose work has already been singled out for praise by Barasin, is advising on several terrorism cases of interest to the USG. These cases include that of two defendants accused of bombing a local shopping center, which killed one individual and severely injured several others. ILA Hulsey is providing one-on-one mentoring to the prosecutor working on the case by observing the trial and advising on trial techniques and strategy. He is also

providing guidance on a terrorism financing case involving a Middle Eastern-based charity that is an umbrella organization for several charities operating in Bosnia, purportedly to assist war orphans. Bosnian officials have been working on the case for over seven years. To date, the State Investigative and Protective Agency (SIPA) investigators have found significant discrepancies between monies these organizations claimed were spent on charitable programs and funds actually spent. ILA Hulsey is helping to coordinate joint meetings of prosecutors and investigators working on the case, collate and analyze evidence collected, and develop investigative and prosecutorial strategies.

¶4. (U) In addition, ILA Hulsey is assisting SDOC in reviewing 76 possible terrorism cases that were recently handed over by the General Crimes Department, and by promoting police-prosecutor cooperation on specific, high-profile cases. (Note: Acting on OPDAT's recommendation, State Prosecutor Milorad Barasin had the General Crimes Division transfer all of its terrorism cases to SDOC, which was already processing terrorism finance cases. End Note)

State Court Confirms High-Profile Terrorism Indictment

¶5. (SBU) As a result of OPDAT's mentoring, the State Court in mid December confirmed a 300-plus page indictment filed by the State Prosecutor's Office against Rijad Rustempasic and four other suspected terrorists and weapons traffickers. The defendants were initially arrested in March 2008 on terrorism charges but were subsequently released with the consent of a prosecutor (from the overburdened and ill-equipped General Crimes Department), who apparently concluded that there was

insufficient evidence of criminal activity in the case. The case was revived after a new prosecutorial team from SDOC was assigned to the case and after it began receiving technical assistance from OPDAT (first from ILA Willis then Hulsey), to develop charges and a case strategy. Owing to this much-needed technical support, Rustempasic and the other defendants were subsequently re-arrested and indicted. The trial against Rustempasic et al is to begin on February 19, ¶2010. (Note: To date, Bosnia, with USG assistance, has successfully prosecuted one terrorism case. See Ref B. End Note).

Study Trips to ICTY, European Court for Human Rights

¶6. (U) From October 18 to 23, 2009 OPDAT sponsored a legal study visit to the International Tribunal for the Former Yugoslavia (ICTY) for 12 judges from state-level, entity, and cantonal courts as part of its long-standing efforts to improve the processing of war crimes and to strengthen the operations of courts and prosecutor's offices nation-wide. The judges participated in discussions on topics they had identified as being of particular interest to them, including the use of ICTY case law; witness support; case management; appellate practice; and use of the ICTY Manual on Best Practices. Particularly noteworthy were the discussions between the ICTY and Bosnian judges on the issues of dissenting opinions and joint criminal enterprise. The ICTY judges were surprised that their Bosnian colleagues did not publish dissenting opinions -- a topic that is being debated in Bosnia -- and both groups of judges exchanged views on problematic aspects of the concept of joint criminal enterprise.

¶7. (U) While at The Hague, the group also paid a visit to the International Criminal Court. It attended a presentation on the differences between an ad hoc tribunal and a permanent international court and another on the different approaches taken by common and civil law judges. The judges also had the opportunity to sit in on court proceedings at both Courts. As others have done in the past, several commented on the conduct of judges, witnesses, prosecutors, and defense counsels, noting that generally speaking, Bosnian judges need to exert stricter control of courtroom proceedings, such as

by insisting that court proceedings begin and end on time.

¶18. (U) From November 15 to 19, 2009 the RLA accompanied eight judges from the State Court, the Federation and Republika Srpska Supreme Courts, the state-level Constitutional Court, and the Sarajevo Municipal Court to the European Court for Human Rights in Strasbourg. The study visit stemmed from observations by international judges working at the Court that Bosnian judges lacked understanding of some aspects of the European Convention for Human Rights. It is part of a wider Embassy initiative to support Bosnia's efforts to move towards the EU, especially since the country is falling behind its neighbors on its path to the EU.

¶19. (U) The judges met the Bosnian judge on the Court and discussed aspects of the European Convention on Human Rights (ECHR) that were of interest to them. They also heard presentations from by Bosnian experts, who, among other things, provided general descriptions of pending cases filed against Bosnia. Of particular interest to the Bosnian judges was the general discussion on the high-profile Sejdic/Finci case, in which a Roma and a Jew alleged they were being discriminated against since the Bosnia's constitution prohibited individuals who identified themselves as "Others" (i.e., Jews, Roma, individuals of mixed ethnic backgrounds) from running for the Presidency and the House of Peoples. ECHR interlocutors underscored that the Sejdic/Finci case be the first case involving a possible violation of Protocol 12, which deals with general discrimination. (Note: As noted in Ref C, the European Court for Human Rights subsequently found Bosnia in violation of the ECHR. End Note) The Bosnian judges also learned how the Court implements its decisions and how to effectively use the Court's database to review case law. Additionally, they sat in on proceedings involving a property rights case against Turkey. Several judges noted that the case was similar to property rights cases of non-Serbs who were forced to leave what is now the RS during the 1992-1995 war.

OPDAT Brings Focus to Needed Reforms

¶10. (SBU) On September 28-29 and later on October 1-2, OPDAT organized two presentations on its findings on trends at the State Court's Appellate Division to fifty State and entity-level judges as part of its efforts to promote needed reform at state-level institutions, which remain a top Embassy priority. International judges working on the appeals panel had long complained of the need to significantly revamp the work of the panel. They have cited among other complaints, opaque standards of review; the tendency of the appeals panels to not only review the merits of cases before them, but to essentially retry cases; and the absence of sentencing guidelines. International prosecutors working at the State Prosecutor's Office had also complained to OPDAT about what they deemed to be a high rate of reversals, revocations or modifications of verdicts which often called for relatively light sentences for egregious crimes -- particularly in organized crime, economic crime, and corruption cases.

¶11. (U) OPDAT's exhaustive research, which examined decisions in over 400 cases over the course of several months, drew attention to the inconsistency in prison sentences handed down by appeals panels, the fact that some trials were too lengthy, the poor quality of written decisions, and the need for appeals panels to narrow the scope of what facts should be viewed as decisive facts, i.e. facts that could change their decisions. OPDAT's research also revealed that a much lower rate of verdicts were modified, revoked, or reversed (30 percent, not 95 percent as have been reported previously). The discussions that followed the presentations of these findings were led by the Honorable D. Brook Smith of the U.S. Third Circuit Court of Appeals whose visit was sponsored by OPDAT. The Bosnian judges and judicial staff welcomed the opportunity to have frank discussions on the work of appeals panels, noting that

OPDAT's initiative had drawn attention to the need to reform the work of appeals panels nation-wide.

¶12. (U) As a follow-up to discussions it spearheaded outlined in Ref D, OPDAT also hosted two roundtables on prison reform on October 6 and October 8, 2009. OPDAT invited representatives of key missions following the issue (OHR/EU Special Representative, the Council of Europe, the European Commission, and the EU Police Monitoring Mission), ICITAP, as well as key Justice Ministry officials to discuss these issues. OPDAT introduced the concept of electronic bracelets for individuals convicted of lesser crimes to free up space for individuals convicted of graver crimes. (Note: Construction of a state prison is expected to start in 2011 and end in 2013. End Note) Several key Bosnian judicial officials have embraced the concept of electronic bracelets and are planning to establish a working group to examine the issue. They expressed willingness to begin working on draft legislation to make the use of electronic bracelets legal in Bosnia and have asked OPDAT to participate in this working group.

Improving Trial Advocacy Skills

¶13. (U) During November 5-7, 2009, OPDAT sponsored the visit of Judge Charles Simpson of the U.S. District Court from the Western District of Kentucky, who traveled to Bosnia to help Bosnian judges and legal officers improve their trial skills, particularly common law elements with which they are still somewhat unfamiliar. Judge Simpson led a roundtable with 20 State Court and Sarajevo Municipal Court judges and legal officers covering a wide range of topics. They included: how to present evidence, conduct direct and cross examination, and handle objections; whether judges should be allowed to write dissenting opinions; and the importance of status conferences -- an initiative introduced by U.S. judges at the State Court designed to improve courtroom scheduling. The judges found this discussion helpful and came to understand the value of dissenting opinions. Many of them admitted that they did not know how to handle objections and would like to have training in this area.

English Language Training in High Demand

¶14. (U) Judges and judicial staff at the State Court continue to attach great importance to the English language program offered by OPDAT. They have repeatedly asserted that

the program is valuable as the Court receives a great number of documents from the International Tribunal for the Former Yugoslavia in English and English language skills are essential for communication and cooperation with other countries, including some in the region. Given this great demand for its classes, OPDAT sought assistance from the Embassy's Office of Public Affairs (OPA) to assist with its ongoing English-language program. In response to OPDAT's request, OPA made it possible for a Fulbright scholar, who had experience teaching legal English, to teach an English-language class for fifteen judges and legal officers. The class, which includes State Court President Meddzida Kreso, began November 19, 2009. In addition, the RLA and an American judge teach legal English classes every week for 15 legal officers from the State Prosecutor's Office and the State Court. While learning English, participants are learning trial advocacy skills (i.e., direct examination, cross examination, and closing argument).

Other Notable Activities

¶15. (U) As part of its ongoing effort to improve donor coordination and to seek opportunities to co-train and hence reduce costs, OPDAT sponsored a second roundtable on October 27, with 14 providers of technical assistance. During the roundtable, donors shared information about planned training programs for the next six months, which OPDAT collected to

update its training calendar. The calendar is shared with all donors as well as the Judicial Training Centers in the Federation and Republika Srpska. As a result of this effort, different institutions have been able to combine their funding and do joint training.

ENGLISH